



# Trans-Tasman Proceedings Amendment Act 2016

Public Act 2016 No 70  
Date of assent 17 October 2016  
Commencement see section 2

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### Part 3

#### Special provisions applying to certain proceedings in High Court of New Zealand and Federal Court of Australia

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Trans-Tasman Proceedings Amendment Act 2016.

**2 Commencement**

This Act comes into force on 1 March 2017.

**3 Principal Act**

This Act amends the Trans-Tasman Proceedings Act 2010 (the **principal Act**).

**4 Section 3 amended (Purpose of, and guides to, this Act)**

After section 3(6), insert:

- (7) Part 3 of this Act, which stands apart from Parts 1 and 2, sets out special provisions applying to certain proceedings in the High Court of New Zealand and the Federal Court of Australia.

**5 Section 4 amended (Interpretation)**

- (1) In section 4(1), replace “In this Act” with “In Parts 1 and 2”.
- (2) In section 4(1), definition of **procedural rules**, replace “this Act or any regulations made under it” with “Parts 1 and 2 or any regulations made under those Parts”.
- (3) In section 4(2)(a), replace “this Act” with “Parts 1 and 2”.

**6 Section 6 repealed (Trans-Tasman market proceedings provisions not affected)**

Repeal section 6.

**7 Section 53 amended (When registrable Australian judgments are enforceable in New Zealand)**

In section 53(2)(a), replace “section 56 of the Judicature Act 1908” with “section 172 of the Senior Courts Act 2016”.

**8 New Part 3 inserted**

After section 78, insert:

**Part 3**

**Special provisions applying to certain proceedings in High Court of New Zealand and Federal Court of Australia**

**79 Part not limited by Part 1 or 2**

This Part is not limited or affected by Part 1 or 2.

**80 Courts (Remote Participation) Act 2010 does not apply to remote appearances under this Part**

Nothing in the Courts (Remote Participation) Act 2010 applies to any remote appearance in accordance with this Part.

Compare: 2010 No 108 s 36

**81 Interpretation**

In this Part, unless the context otherwise requires,—

**Australian proceeding—**

(a) means a proceeding in which a matter for determination arises, whether or not any other matter arises for determination, under—

(i) any of sections 46A, 155A, and 155B of the Competition and Consumer Act 2010 (Aust); or

(ii) a provision of Part VI or XII of the Competition and Consumer Act 2010 (Aust) in so far as the provision relates to any of sections 46A, 155A, and 155B of that Act; and

(b) includes an interlocutory proceeding related to such a proceeding and an application for the issue, execution, or enforcement of a judgment, an order, or an injunction given, made, or granted in such a proceeding

**Federal Court** means the Federal Court of Australia

**New Zealand proceeding—**

- (a) means a proceeding in which a matter for determination arises, whether or not any other matter arises for determination, under—
  - (i) any of sections 36A, 98H, and 99A of the Commerce Act 1986; or
  - (ii) a provision of Part 6 or 7 of the Commerce Act 1986 in so far as the provision relates to any of sections 36A, 98H, and 99A of that Act; and
- (b) includes an interlocutory proceeding related to such a proceeding and an application for the issue, execution, or enforcement of a judgment, an order, or an injunction given, made, or granted in such a proceeding.

Compare: 1908 No 89 s 56D

## **82 High Court may order New Zealand proceedings to be heard in Australia**

- (1) The High Court may, if it is satisfied that a New Zealand proceeding could more conveniently or fairly be tried or heard by the High Court in Australia or that the evidence in a New Zealand proceeding could more conveniently be given in Australia, as the case may be, order that the proceeding be tried or heard in Australia, or that the evidence be taken in Australia, and may sit in Australia for that purpose.
- (2) The order must specify—
  - (a) the place in Australia where the proceeding will be tried or heard or the evidence taken, as the case may be;
  - (b) the date or dates of the trial or hearing or on which the evidence will be taken, as the case may be;
  - (c) any other matters relating to the trial or the hearing or the taking of the evidence, as the case may be, as the court thinks fit.
- (3) Without limiting the powers of the High Court in relation to the proceeding, the High Court may give judgment in, or make any determination for the purposes of, a New Zealand proceeding in Australia.

Compare: 1908 No 89 s 56E

## **83 Australian counsel entitled to practise in High Court**

A person who is entitled to practise as a barrister or solicitor, or both, in the Federal Court is entitled to practise as a barrister or solicitor, or both, in relation to—

- (a) a New Zealand proceeding before the High Court sitting in Australia;
- (b) the examination, cross-examination, or re-examination of a witness in Australia whose evidence is being taken by audio link or audiovisual link in a New Zealand proceeding before the High Court in New Zealand:

- (c) the making of submissions by audio link or audiovisual link to the High Court in New Zealand in a New Zealand proceeding.

Compare: 1908 No 89 s 56F

#### **84 High Court may set aside subpoena issued in New Zealand proceeding**

- (1) On application, the High Court may set aside an order of subpoena issued by the High Court requiring the attendance of a person in Australia to give evidence or to produce documents to the High Court for the purposes of a New Zealand proceeding.
- (2) An application under subsection (1) must be made by the person served with the order of subpoena and may be made *ex parte*.
- (3) Without limiting the grounds on which the order of subpoena may be set aside, the High Court may set the order aside on any of the following grounds:
  - (a) that the witness does not have, and cannot reasonably be expected to obtain, the necessary travel documents:
  - (b) that the witness is liable to be detained for the purpose of serving a sentence:
  - (c) that the witness is liable to prosecution for an offence:
  - (d) that the witness is liable to the imposition of a penalty in civil proceedings, not being proceedings for a pecuniary penalty under section 80 or 83 of the Commerce Act 1986:
  - (e) that the evidence of the witness can be obtained without significantly greater expense by other means:
  - (f) that compliance with the order of subpoena would cause hardship or serious inconvenience to the witness:
  - (g) in the case of an order of subpoena that requires a witness to produce documents, whether or not it also requires the witness to give evidence, that the court is satisfied that the documents should not be taken out of Australia and that evidence of the contents of the documents can be given by other means.
- (4) Every application to set aside an order of subpoena under subsection (1) must be made by affidavit.
- (5) The affidavit must—
  - (a) be sworn by the applicant; and
  - (b) set out the facts on which the applicant relies; and
  - (c) be filed in the office of the court that issued the order of subpoena.
- (6) The Registrar of the court must ensure that a copy of the affidavit is served on the solicitor on the record for the party to the proceedings who obtained the order of subpoena, or, if there is no solicitor on the record, on that party.

Compare: 1908 No 89 s 56G

**85 Injunctions and orders in New Zealand proceedings**

Despite any rule of law, the High Court may, in a New Zealand proceeding, make an order or grant an injunction that the court is empowered to make or grant that requires a person to do an act, or refrain from engaging in conduct, in Australia.

Compare: 1908 No 89 s 56H

**86 Issue of subpoenas in New Zealand proceedings**

- (1) An order of subpoena may, with the leave of a Judge, be obtained in a New Zealand proceeding to require a person in Australia to give evidence, or to produce documents or things, or both, to the High Court at a sitting of that court in New Zealand or in Australia.
- (2) An order of subpoena, issued for the purposes of a New Zealand proceeding, that requires a witness in Australia to produce documents or things, but does not require the witness to give evidence, must permit the witness to comply with the order of subpoena by producing the documents or things to a specified registry of the Federal Court.

Compare: 1908 No 89 s 56I

**87 Powers of Federal Court of Australia**

- (1) The Federal Court of Australia may exercise all the powers of that court—
  - (a) at a sitting of that court in New Zealand held for the purposes of an Australian proceeding:
  - (b) at a sitting of that court in Australia held for the purposes of an Australian proceeding at which the evidence of a witness in New Zealand is taken by audio link or audiovisual link or at which submissions are made in New Zealand by a barrister or solicitor, or both, or by a party to the proceedings by audio link or audiovisual link.
- (2) Without limiting subsection (1), the Federal Court of Australia Act 1976 (Aust) and the rules of court made under that Act that are applicable in relation to Australian proceedings generally apply to the practice and procedure of the Federal Court at any sitting of that court of the kind referred to in that subsection.
- (3) Without limiting subsection (1), the Federal Court may, at any such sitting of the court in New Zealand or in Australia, by order—
  - (a) direct that the hearing or any part of the hearing be held in private:
  - (b) require any person to leave the court:
  - (c) prohibit or restrict the publication of evidence or the name of any party or any witness.
- (4) Nothing in subsection (1) or (2) applies in relation to—
  - (a) the power of the court to punish any person for contempt; or

- (b) the prosecution of any person for an offence committed as a witness; or
  - (c) the enforcement or execution of any judgment, order, injunction, writ, or declaration given, made, or granted by the court.
- (5) An order made under subsection (3) may be enforced by a Judge of the High Court who, for that purpose, has and may exercise the powers, including the power to punish for contempt, that would be available to enforce the order if it had been made by that Judge.

Compare: 1908 No 89 s 56J

### **88 Issue of subpoenas in Australian proceedings**

- (1) An order of subpoena, issued by the Federal Court with the leave of a Judge of that court, requiring the attendance of a person in New Zealand to give evidence or to produce documents for the purposes of an Australian proceeding may be served on that person in New Zealand by leaving a sealed copy of the subpoena with that person personally, together with a statement setting out the rights and obligations of that person, including information as to the manner in which an application may be made to that court to have the subpoena set aside.
- (2) A person who has been served with an order of subpoena under subsection (1) may not be compelled to comply with the order unless, at the time of service of the order or at some other reasonable time before the hearing, allowances and travelling expenses or vouchers sufficient to enable that person to comply with the order are tendered or paid to that person.

Compare: 1908 No 89 s 56K

### **89 Failure of witness to comply with subpoena issued in Australian proceeding**

- (1) The High Court may, on receiving a certificate under the seal of the Federal Court stating that a person named in the certificate has failed to comply with an order of subpoena requiring that person to attend as a witness for the purposes of an Australian proceeding, issue a warrant requiring any constable to arrest that person and bring that person before the court.
- (2) The High Court may, on the appearance of that person before the court, impose a fine not exceeding \$1,000, unless the court is satisfied that the failure to comply with the order of subpoena, the onus of proof of which lies with that person, should be excused.
- (3) In determining whether the failure to comply with the order of subpoena should be excused, the High Court may have regard to—
- (a) any matters that were not brought to the attention of the Federal Court if the High Court is satisfied that—
    - (i) the Federal Court would have been likely to have set aside the order of subpoena if those matters had been brought to the attention of that court; and

- (ii) the failure to bring those matters to the attention of the Federal Court was not because of any fault on the part of the person alleged to have failed to comply with the order of subpoena or was because of an omission by that person that should be excused; and
  - (b) any matters to which the High Court would have regard if the order of subpoena had been issued by the High Court.
- (4) For the purposes of this section, but subject to subsection (3), a certificate under the seal of the Federal Court is conclusive evidence of the matters stated in it if the certificate states—
  - (a) that the order of subpoena was issued by that court:
  - (b) that the witness failed to comply with the order of subpoena:
  - (c) the decision of that court, or any orders or findings of fact made by that court, in relation to any application made to that court to have the order of subpoena set aside.
- (5) Subject to subsection (3), no findings of fact made by the Federal Court on an application to that court to have the order of subpoena set aside may be challenged by any person alleged to have failed to comply with the order unless the court was deliberately misled in making those findings of fact.

Compare: 1908 No 89 s 56L

#### **90 Federal Court of Australia may administer oaths in New Zealand**

- (1) The Federal Court may administer an oath or affirmation in accordance with the practice and procedure of that court—
  - (a) at any sitting of that court in New Zealand held for the purposes of an Australian proceeding; or
  - (b) for the purposes of obtaining the evidence of a person in New Zealand by audio link or audiovisual link at a sitting of that court in Australia.
- (2) Evidence given by a person on oath or affirmation administered by the Federal Court under subsection (1) for the purposes of section 108 of the Crimes Act 1961 (which relates to perjury) is to be deemed to have been given as evidence in a judicial proceeding on oath.

Compare: 1908 No 89 s 56M

#### **91 Orders made by Federal Court of Australia not subject to review**

No application for review under the Judicial Review Procedure Act 2016 and no application for an order of mandamus, prohibition, or certiorari or for a declaration or injunction may be brought in respect of any judgment, order, or determination of the Federal Court made or given at a sitting of that court in New Zealand in an Australian proceeding.

Compare: 1908 No 89 s 56N

**92 Contempt of Federal Court of Australia**

- (1) Every person commits an offence who, at any sitting of the Federal Court in New Zealand,—
- (a) assaults, threatens, intimidates, or wilfully insults—
    - (i) a Judge of that court; or
    - (ii) a Registrar or an officer of that court; or
    - (iii) a person appearing as a barrister or solicitor, or both, before that court; or
    - (iv) a witness in proceedings before that court; or
  - (b) wilfully interrupts or obstructs the proceedings; or
  - (c) wilfully and without lawful excuse disobeys any order or direction of the court in the course of the proceedings.
- (2) Every person who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$1,000.

Compare: 1908 No 89 s 56O

**93 Arrangements to facilitate sittings**

- (1) The Chief Justice of New Zealand may make arrangements with the Chief Justice of the Federal Court for the purposes of giving effect to this Part.
- (2) Without limiting subsection (1), arrangements may be made—
- (a) to enable the High Court to sit in Australia in New Zealand proceedings in the courtrooms of the Federal Court or in other places in Australia;
  - (b) to enable the Federal Court to sit in New Zealand in Australian proceedings in the courtrooms of the High Court or in other places in New Zealand;
  - (c) to enable evidence to be given and submissions of counsel to be made in New Zealand proceedings or in Australian proceedings by audio link or audiovisual link;
  - (d) for the provision of registry facilities and court staff for the purposes of a New Zealand proceeding or an Australian proceeding.

Compare: 1908 No 89 s 56P

**94 Privileges and immunities of Judges, counsel, and witnesses in Australian proceedings**

- (1) A Judge of the Federal Court sitting as a Judge of that court in New Zealand in an Australian proceeding has all the protections, privileges, and immunities of a Judge of the High Court.
- (2) A witness has all the privileges and immunities of a witness in the High Court when the witness gives evidence in an Australian proceeding—

- (a) at a sitting in New Zealand of the Federal Court; or
  - (b) by audio link or audiovisual link at a sitting in Australia of the Federal Court.
- (3) A person has all the privileges and immunities of counsel in the High Court when appearing as a barrister or solicitor, or both, in an Australian proceeding—
- (a) at a sitting in New Zealand of the Federal Court; or
  - (b) by audio link or audiovisual link at a sitting in Australia of the Federal Court.
- (4) A person has all the privileges and immunities of a party in the High Court when appearing as a party in an Australian proceeding—
- (a) at a sitting in New Zealand of the Federal Court; or
  - (b) by audio link or audiovisual link at a sitting in Australia of the Federal Court.

Compare: 1908 No 89 s 56Q

#### **95 High Court may take evidence at request of Federal Court**

- (1) The High Court may, at the request of the Federal Court, take evidence in New Zealand for the Federal Court for the purposes of an Australian proceeding and may, by order, make any provision it considers appropriate for the purpose of taking that evidence.
- (2) An order may require a specified person to take such steps as the High Court considers appropriate for taking the evidence.
- (3) Without limiting subsections (1) and (2), an order may, in particular, make provision for—
- (a) the examination of witnesses, either orally or in writing; or
  - (b) the production of documents or things; or
  - (c) the inspection, photographing, preservation, custody, or detention of any property; or
  - (d) the taking of samples of property and carrying out experiments on or with property.
- (4) The High Court may make an order requiring a person to give evidence either orally or by tendering a written document otherwise than on oath or affirmation if the Federal Court requests it to do so.
- (5) A person who has been served with an order made under this section may not be compelled to comply with the order unless, at the time of service of the order or at some other reasonable time before the person is required to comply with the order, allowances and travelling expenses or vouchers sufficient to enable the person to comply with the order are tendered or paid to the person.

- (6) A person may not be compelled to give evidence pursuant to an order under this section that he or she is not compelled to give in the Australian proceeding to which the request relates.

Compare: 1908 No 89 s 56R

#### **96 Power to make rules for purposes of this Part**

- (1) Rules may be made under section 148 of the Senior Courts Act 2016 for, or in relation to, Australian proceedings and New Zealand proceedings.
- (2) Without limiting subsection (1), rules may be made that make provision for, or in relation to,—
- (a) the giving of evidence and the making of submissions in New Zealand proceedings by audio link or audiovisual link:
  - (b) receiving, for the purposes of subpart 8 of Part 3 of the Evidence Act 2006, facsimiles as evidence of documents or things:
  - (c) the issuing of subpoenas for service in Australia for the purposes of New Zealand proceedings and the service of those subpoenas:
  - (d) the payment to witnesses required to comply with orders of subpoena served in Australia for the purposes of New Zealand proceedings of amounts in respect of expenses and loss of income occasioned by compliance with those orders:
  - (e) the lodging of documents or things with the Federal Court in compliance with orders of subpoena issued in New Zealand proceedings that require only the production of documents or things by witnesses:
  - (f) the transmission to the Federal Court of documents (or certified copies of those documents) or things lodged with the High Court in Australian proceedings in compliance with orders of subpoena issued by the Federal Court:
  - (g) the hearing of applications to set aside orders of subpoena under section 84:
  - (h) sittings of the High Court in Australia:
  - (i) giving effect to arrangements made under section 93:
  - (j) the form of certification of judgments, orders, and injunctions in New Zealand proceedings:
  - (k) the taking of evidence under section 95:
  - (l) any other matters as are contemplated by or necessary for giving effect to this Part.

Compare: 1908 No 89 s 56S

**97 Transitional provision for certain proceedings commenced before commencement of this Part**

- (1) This section applies to any proceeding commenced, but not yet determined, under Part 1A of the Judicature Act 1908 before the commencement of this section.
- (2) If this section applies, the proceeding must be treated as if it had been commenced under this Part.

**9 Consequential amendment to Evidence Act 2006**

- (1) This section amends the Evidence Act 2006.
- (2) In section 153, replace “Part 1A of the Judicature Act 1908” with “Part 3 of the Trans-Tasman Proceedings Act 2010”.

**Legislative history**

14 September 2016	Divided from Judicature Modernisation Bill (Bill 178–2) as Bill 178–3W
11 October 2016	Third reading
17 October 2016	Royal assent

This Act is administered by the Ministry of Justice.